

ADMINISTRATIVE PROCEDURES FOR THE ARKANSAS STATE BOARD OF HEALTH AND THE ARKANSAS DEPARTMENT OF HEALTH

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PART I. ADJUDICATION

SECTION I. SCOPE.

The State Board of Health and the Department of Health are exempt from the Administrative Procedures Act (Ark. Stat. Ann. § 5-701 et seq. (Repl. 1976)). For many years the Board and Department have chosen to voluntarily comply with the general provisions of the Administrative Procedures Act to ensure that all affected parties are afforded due process of law. These procedures have been developed by the Board of Health and the Department of Health to guide their conduct in making administrative decisions regarding the activities under their jurisdiction.

The Board of Health (Ark. Stat. Ann. § 82-101 (Repl. 1976)) has adopted rules and regulations governing numerous subjects in order to promote the public health of the citizens of the State of Arkansas. These rules have been promulgated based on the general authority conferred by Ark. Stat. Ann. § 82-110 and, in some instances by more specific authority, set forth in other related statutes. These rules shall apply in all cases in which they are not in direct conflict with any other statutory provision. Board Rules have been adopted covering:

Abortion Facilities Standards
 Administrative Procedures
 Bakeries and Candy Factories
 Bedding, Manufacture, Renovation and Sale
 Blood Alcohol, Ignition Interlock Devices
 Blood Alcohol: Testing/Prev. Blood Alcohol Analysis
 Bottling Plants
 Camps
 Cancer Registry
 Canning Plants
 Communicable Diseases -
 AIDS/STD
 Immunizations
 Influenza
 Tuberculosis
 Controlled Substances
 Domiciliary Care Establishments
 Drug Precursors
 Dry Cleaning Machines
 Eggs/Egg Products, Processing of
 Emergency Medical Services
 Environmental Sanitation/Industrial Establishments
 Flour and Bread Enrichment
 Food and Beverages, Vending
 Food, Drugs and Cosmetics
 Food, Pie or Sandwiches, Prepackaged
 Food Processing Establishments, Plan Review
 Food Salvage

Food, Sandwiches, Production/Labeling
 Food Service Establishments
 Food Stores, Markets and Warehouses
 Frozen Desserts
 Frozen Food Locker Plants
 Frozen Food Processing Plants
 Frozen Food, Retail Stores
 Frozen Food Warehouses
 Frozen Foods, Transportation
 Frozen Yogurt
 Hazardous Materials
 Health Maintenance Organizations
 Home Health
 Hospice
 Hospitals/Related Institutions
 Hotels and Motels
 Heating, Ventilation, Air Conditioning
 Ice, Manufacture, Processing, Storage, Transportation
 Imitation Dairy Products
 In Vitro Fertilization
 Indoor Air Quality
 Insecticide Dispensers
 Lay Midwife Practices
 Mass Gatherings
 Methadone Treatment
 Milk, Bulk Tanks
 Milk, Grade A
 Milk, Manufacturing Purposes
 Milk, Milk Products
 Mobile Home and Travel Trailer Parks
 Natural Gas Plumbing

Outdoor Bathing Places
Pet Stores
Plumbing
Poultry and Rabbit Dressing Plants
Prenatal Examinations
Public Rest Rooms
Rabies Control
Radiation Control
Recreational Lots
Rooming Houses
Sanitation, General
Schools, Private, Public, Parochial
Screening, Newborn, PKU,
 Hypothyroidism, Sickle Cell
Screening, Scoliosis
Septic Tank Cleaning
Serological Testing, Certification Clinical
 Labs
Sewage Disposal Systems, Designated
 Reps/Installation
Sewage Disposal, Boats/Marine Toilets
Sewage, Alternate Systems
Sewage, Public Systems
Shellfish
Small Package Labeling
Sorghum
Special Plumbers License

Subdivision Plants, Water/Septic Tank
 Systems
Swimming, Spray & Wading Pools
Tattoo and Semi-Permanent
 Pigmentation

TB Testing
Toxic Substances & Etiologic
 Agents/Experimental
Utilization Review
Viable Pathogenic Organisms, Sale/
 Shipment
Vital Records
Waste, Medical
Waste, Special, Health Care Related
 Facilities
Water, Bottled Drinking
Water Supply Operators Licensing
Water Supply, Semi-Public
Water Systems, Individual Supply
 (Wells)
Water Systems, Public

Not every matter with which the Board or Department deals is subject to the requirement of a formal adjudication. These procedures would not be applicable, for instance, to personnel actions, general nuisance investigations and routine administrative activities undertaken by the Board or Department.

These standards set forth both the process for the final disposition of a matter involving the Board's enforcement of one of its rules or regulations as well as the procedure for the adoption, amendment or repeal of a rule or regulation.

SECTION II. DEFINITIONS.

Adjudication - The process by which the Board formulates an order.

Affected Party - A person who is an applicant for or holder of a license or one who considers himself to be affected by the order of the agency in a manner that is directly injurious to his person or property. Affected party includes the Department of Health or any member of the Board of Health.

Agency - The State Board of Health or the Department of Health.

Board - State Board of Health (Ark. Stat. Ann. § 2-101).

Department - Arkansas Department of Health (Ark. Stat. Ann. § 5-911).

Hearing Officer - The person designated to preside over hearings.

Hearing Committee - The person or persons appointed by the President of the Board to conduct administrative hearings.

License - A permit, certificate, approval, registration or similar permission required by law.

Person - Any individual, partnership, corporation, association, or public or private organization of any character.

Order - The final disposition of a matter by the Department and/or Board in any case involving the granting, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license.

SECTION III. HEARINGS.

In the case of each final order issued by the Department any affected party may within 30 days of such order submit a written request for a hearing to the Director of the Department.

A. Notice. All hearings will be scheduled within a reasonable time and held after reasonable notice has been provided to all known affected parties. Such notice shall include:

1. A statement of the time, place, and nature of the hearing.
2. A brief statement of the law or rule under which reason for the hearing arises.
3. A brief statement of the facts and law.

B. Hearing Committee and Hearing Officer.

Hearings may be conducted before the entire Board of Health, one or more members of the Board, an examiner or referee or one or more members of the Department. The Director of the

Department shall recommend to the President of the Board the composition of a hearing committee and a hearing officer to preside at the hearing. The President of the Board shall appoint the hearing officer and other hearing committee members.

The hearing officer and other members should conduct themselves in an impartial manner and at any time may choose to withdraw if (1) they deem themselves disqualified or if (2) they possess a personal bias regarding the case.

The hearing officer is authorized to:

1. Administer oaths and affirmations;
2. Provide for the issuance of subpoenas;
3. Maintain order;
4. Rule on all questions arising during the course of the hearing;
5. Hold conferences for settlement or simplifications of issues;
6. Recommend proposed findings of fact and conclusions of law to the Board within 30 days after the conclusion of the hearing proceeding.

Any member of the hearing committee shall be entitled to question any party or witness.

C. Miscellaneous. The agency should compile a complete copy of its entire administrative file concerning the matter involved and make it available to affected parties upon request at least 10 days prior to the commencement of a hearing.

Each affected party shall have the right to appear at the hearing in person or by counsel and shall have the right to be accompanied and advised by counsel.

Each affected party shall have the right to conduct cross-examination of any witness and to call witnesses on their behalf to present sworn testimony to support their position with respect to the matter adjudicated.

Each party shall be responsible for the presence of his witnesses. An affected party has the burden of proving the necessary facts to support and sustain its position and the agency's order shall not be changed unless there is clear and convincing evidence to support such change.

Failure of an affected party to appear except upon good cause shown shall result in an affirmance of the agency's order.

D. Record. The Department of Health shall ensure that a copy of the transcript of all proceedings is made to be included as part of the record which shall also include:

1. The aforementioned administrative file of the Department of Health;
2. All pleadings, motions and intermediate rulings;
3. All evidence received and considered;
4. Rulings;
5. Proposed findings where requested by the hearing officer.

E. Findings of Fact and Conclusions of Law.

Within thirty days after the termination of the hearing, the hearing officer shall prepare recommended written findings of fact and conclusions of law which shall be forwarded to the Secretary of the Board. The Board at its next regular meeting shall then approve, reject or modify such recommended findings and conclusions and thereupon cause a copy to be forwarded to the affected parties.

The Board may, in cases where a majority of its members have not heard the case or read the record, at its discretion, permit affected parties to submit briefs and conduct oral argument before them.

SECTION IV. JUDICIAL REVIEW.

A person who considers himself injured in his person, business, or property by final agency action shall be entitled to judicial review thereof.

Proceedings for review shall be instituted by filing a petition in the Circuit Court of Pulaski County within thirty days after service upon petitioner of the agency's final decision. Copies of the petition shall be served upon the agency and all other parties of record by personal delivery or by mail. The court, in its discretion, may permit other interested persons to intervene.

The filing of the petition shall not automatically stay enforcement of the agency decision, but the Board, Department or a reviewing court may do so upon such terms as may be deemed to be in the best interest of all parties and so as to provide for the protection of the public's health.

Within thirty (30) days after service of the Petition, or within such further time as the court may allow, but not exceeding an aggregate of ninety (90) days, the Department shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

If, before the date set for hearing, application is made to the court for leave to present additional evidence, and the court finds that the evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon a showing that such evidence is vital to a review of the case and that reasons prohibited its presentation before the agency.

The review shall be conducted by the court without a jury and shall be confined to the record. The court may, upon request, hear oral argument and receive written briefs.

The court may affirm the decision of the agency or remand the case for further proceedings. It may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

1. In violation of constitutional or statutory provisions;
2. In excess of the agency's statutory authority;
3. Made upon unlawful procedure;
4. Affected by other error of law;
5. Not supported by substantial evidence of record; or

6. Arbitrary, capricious, or characterized by abuse of discretion.

SECTION V. EX PARTE COMMUNICATIONS.

Unless required for disposition of a matter or by law, hearing participants, including members of the Board of Health or employees of Department of Health assigned to render a decision or to make final or proposed findings of fact shall not communicate directly or indirectly in connection with any issue of fact with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate, except that a hearing officer or any member of a hearing committee may communicate with other members of the agency and with his assistants or aids.

PART II. RULE MAKING

SECTION I. GENERAL.

All rules and regulations of the Board of Health shall be adopted, amended or repealed in substantial compliance with these procedures. Proposed rules should be reviewed by the Bureau and Division directors, the Agency director and the agency attorney prior to dissemination. All rules in final draft form should be presented to the Executive Committee of the Board which may authorize the Department to proceed with the administrative procedures necessary for final adoption.

Each proposed rule should include a statement of purpose and authority which sets forth the nature and reason for the rule and the specific statute(s) under which it is adopted.

SECTION II. PUBLIC HEARINGS.

After Executive Committee authorization is obtained the Department shall provide notice of a public hearing on each proposed rule in a newspaper(s) of general daily circulation. The notice must be published at least twenty (20) days prior to the date set for the public hearing. Such notice should be published for seven (7) consecutive days.

The notice should include a brief statement of the terms and subject of the rule, the time and place of the hearing and the manner in which interested parties may present their views thereon. Oral comments received at public hearings should be recorded and, together with all written comments, be made a part of the Department's public file. The public hearing shall be presided over by one or more members of the agency. If at any time subsequent to the public hearing a material change is made in the proposed rule, as determined by the agency, another public hearing may be conducted.

A copy of any proposed rule or change must be submitted to the Legislative Council staff on approved forms and to the Office of the Governor at least ten (10) days prior to the date of the public hearing. The proposed rule will be placed on the Legislative Council agenda and a Department representative will attend a meeting to answer any questions from legislators.

SECTION III. ADOPTION AND FILING.

Each new or amended rule shall receive the approval of the Board at a regular or special meeting.

After the Board adopts, amends or repeals any rule, a copy thereof signed by the Secretary of the Board shall be forwarded to the Office of the Governor for approval, signature and filing.

The Department shall then file a signed copy with the Legislative Council, the Secretary of State of the State of Arkansas and the Circuit Clerk of each county of Arkansas in a form prescribed by the agency.

Each rule shall become effective twenty (20) days after it is filed with the Legislative Council. Each rule will be published in the Arkansas Register by the Secretary of State after it is filed.

If the Board of health finds that an imminent peril to the public's health and safety exists, an emergency rule may be adopted without prior notice or hearing and in such case shall become effective immediately after filing. The Department's finding of such emergency and a brief statement of the reasons should be filed along with the rule at the Legislative Council. No emergency rule shall be valid for more than one hundred twenty (120) days.

SECTION IV. REVIEW OF RULES.

Any person may petition the agency to obtain a declaratory statement as to the applicability of any rule. Such statement shall be issued within a reasonable time. The validity or applicability of any rule may be determined upon judicial review by way of declaratory judgment upon application therefor in the Circuit Court of Pulaski County, Arkansas.

CERTIFICATION

I certify that the foregoing procedures were duly adopted by the Arkansas State Board of Health at its regular meeting on the 15th day of November, 1984.

(signed)

Ben N. Saltzman, M.D.

Secretary, State Board of health

The foregoing Rules and Regulations of the State Board of health governing Administrative procedures have been filed in this office and are hereby approved on this 25th day of February, 1985.

(signed)

Bill Clinton

Governor